

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.12/MP/2017

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K.Iyer, Member

Date of order: 22nd of March, 2017

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest over all the movable and immovable assets of the Petitioner in favour of Security Trustee/Lenders and for any subsequent transferees, assign, novatees thereof and any refinancing lenders to the Project, acting on behalf of and for the benefit of the Lenders pursuant to Indenture of Mortgage Agreement and other security creating documents/Financial Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Mortgaged Properties and Project Assets, for the transmission lines, i.e. (i) Aligarh-Prithala 400 kV D/C HTLS Line, (ii) Prithala-Kadarpur 400 kV D/C HTLS Line, (iii) Kadarpur-Sohna Road 400 kV D/C HTLS line, (iv) LILO of Gurgaon-Manesar 400 kV D/C Quad line at Sohna Road S/S, (v) Neemrana (PG)-Dhanonda (HVPNL) 400 kV D/C HTLS Line, (vi) Creation of 400/220 KV, 2 x 500 MVA GIS sub-station at Kadarpur in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor, (vii) Creation of 400/220 kV, 2 x 500 MVA GIS sub-station at Sohna Road in Gurgaon area along with 1 no. of 125 MVAR Bus Reactor, (viii) Creation of 400/220 kV 2x500 MVA GIS sub-station at Prithala in Palwal area along with 1 No. of 125 MVAR Bus Reactor., and (ix) 2 Nos. of 400 KV line bays at 400 kV Dhanonda (HVPNL) sub-station.

And

In the matter of

1. Gurgaon Palwal Transmission Limited
F-1, The Mira Corporate Suites 1 & 2 Ishwar Nagar,
Okhla Crossing, Mathura Road,
New Delhi-110 065.

2. IDBI Trusteeship Services Limited
Asian Building, Ground Floor,
17, R.Kamani Marg, Ballard Estate,
Mumbai-400 001

..... **Petitioners**

Vs

1. U.P.Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,

Lucknow-226 001

2. UTC Chandigarh, Chandigarh Secretariat,
Sector 9, Chandigarh, 160 009

3. BSES Yamuna Power Ltd.
2nd Floor, B Block, Shakti Kiran Building,
Near Karkardooma Court,
New Delhi-110032

4. BSES Rajdhani Power Ltd.
BSES Bhawan, 2nd Floor, B-Block
Nehru Place,
New Delhi-110019

5. TATA Power Delhi Distribution Ltd.
33 kV S/Stn. Building,
Hudson Lane, Kingsway Camp,
New Delhi-110019

6. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi-110001

7. Himachal Pradesh State Electricity Board Ltd.
Vidyut Bhawan,
Shimla-171004

8. Haryana Power Purchase Centre
2nd Floor, Shakti Bhawan, Sector 06,
Panchkula-134109

9. Power Development Department, Govt. of Jammu & Kashmir
Civil Sect.,
Jammu-180001
New Delhi-110019

10. Punjab State Power Corporation Ltd.
The Mall,
Patiala-147001

11. Ajmer Vidyut Vitran Nigam Ltd.
Old Power House, Hathi Bhatta,
Jaipur Road, Ajmer

12. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House Industrial Area,
Jodhpur-342003

13. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jyoti Nagar, Jyoti Marg,
Jaipur-302005

14. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun-248001

..... Respondents

The following were present:

1. Shri Pulkit Sharma, GPTL
2. Shri T N Reddy, GPTL

ORDER

The first petitioner herein, Gurgaon Palwal Transmission Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to transmit electricity as a transmission licensee and for that purpose to undertake the business of establishing transmission system for "creation of new 400 kV GIS Sub-station in Gurgaon and Palwal area as a part of ISTS" on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 29.9.2016.

2. Gurgaon Palwal Transmission Limited and IDBI Trusteeship Services Limited have filed a combined petition for creation of security in favour of IDBI Trusteeship Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents by way of mortgage/hypothecation/assignment on project assets for benefit of the lenders to the project. The petitioners have made the following prayers:

"(a) Approve the creation of security Interest, over all the movable and immovable assets of Petitioner No. 1 and to the extent as mentioned in paras 5 and 6 above, in favour of Security Trustee/Lenders and for subsequent transferees, assigns, novatees

thereof and any refinancing lenders to the project, acting on behalf of and for the benefit of the Lenders pursuant to Indenture of Mortgage Agreement and other security creating documents/Financial Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Mortgaged Properties and Project Assets and for amendment of the security documents to include the assigns, transferees and novatees of the Lenders.

(c) Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case;”

3. According to the first petitioner, for the purpose of finance for the project, the first petitioner requested the lenders for which lenders have agreed to make available financial assistance for amounting to Rs. 800 crore as rupee term loan for the project. In this regard, Yes Bank Limited has agreed to act as lead bank for the consortium of lenders. For this purpose, the first petitioner and Yes Bank Limited have appointed the second petitioner, namely IDBI Trusteeship Services Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security Trustee for the lenders including their assigns, transferees and novatees and has entered into Security Trustee Agreement and Facility Agreement on 7.10.2016.

4. The first petitioner has submitted that pursuant to the Facility Service Agreement, the secured obligations are secured by,

(a) A first charge on all the Borrower`s immovable properties in relation to the Project including the project site, both present and future;

(b) A first charge on all the borrower`s movable assets in relation to the Project, including moveable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets in relation to the Project, both present and future;

(c) A first charge over all Account and all other bank accounts of the Borrower in relation to the Project including the Trust and Retention Account, DSRA

and other reserves and the sub-accounts (or any account in substitution thereof) that may be opened in accordance with this Agreement, the Trust and Retention Account Agreement or any of the other transaction documents and all funds from time to time deposited therein and all funds arising from the project, the project proceeds and all permitted investments or other securities, both present and future, until the final settlement date;

- (d) A first charge over all the current assets of the borrower in relation to the project, both present and future;
- (e) A first charge on all revenues and receivables of the borrower whether or not deposited in the Accounts, the book debts of the borrower, the operating cash flows of the borrower and all other commissions and revenues and cash of the borrower, both present and future;
- (f) A first charge on all intangible assets of the borrower in relation to the project including but not limited to goodwill, rights, undertaking and uncalled capital, both present and future;
- (g) A first charge/assignment by way of security, in
 - (i) all the rights, title, interest, benefits, claims and demands whatsoever of the borrower in the project documents;
 - (ii) the rights, title, interest and benefits of the borrower in, to and under all the clearances (including the transmission licence of the project), to the extent permissible by applicable law;
 - (iii) all the rights, title, interest, benefits, claims and demands whatsoever of the borrower in any letter of credit, guarantee, warranty (including contractor guarantees) and liquidated damages (including contractual damages) and performance bond provided by any counter-party to the project documents;

(iv) all the rights, title, interest, benefits, claims and demands whatsoever of the borrower under all insurance contracts with the Security Trustee, duly endorsed as the loss payee.

(h) the above security shall in all respects rank pari-passu inter-se amongst the lenders without any preference or priority to one over the other or others.

5. The first petitioner has submitted that it has agreed to create security interest in favour of the representative of the lenders pursuant to Indenture of Mortgage Agreement and Financial Agreements, by way of mortgage/hypothecation/assignment in accordance with the provisions of the Indenture of Mortgage Agreement and the Financial Agreements, and has agreed that it shall be lawful for the representatives of the lenders to enter into and take possession of mortgaged properties along with all the movables, intangibles and any future assets under the project comprised in financial agreement and thenceforth, the first petitioner shall take no action inconsistent with or prejudicial to the right of the Lenders Representatives/Security Trustee acting on behalf of the Lenders and their assigns, transferees and novatees/Security Trustee quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereon without interruption or hindrance by it or any person or persons whosoever.

6. The first petitioner has submitted that under the financial agreements and on enforcement of the security interest, it shall be lawful for the Lenders Representative/Security Trustee, acting on behalf of and for the benefit of the Lenders/Security Trustee, to enter into and take possession of the assets/properties mortgaged/charged/assigned for their benefit and substitute themselves of any of the

them or its nominees for the first petitioner under any or all of the projects document(s).

7. The first petitioner has further stated that Article 15.2.2 of the Transmission Service Agreement entered into between the first petitioner and the beneficiaries of the project provide that the first petitioner is free to create any encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of the lenders or the representative of the lenders as security for amount payable under the Financing Agreements and any other amounts agreed by the parties. Provided that:

- (i) The lenders or the representatives of the lenders on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and
- (ii) Any encumbrance granted by the first petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees unconditionally with the first petitioner to release such encumbrances upon payment by the first petitioner to the lenders, of all amounts due under the Financing Agreements.

8. The first petitioner has submitted that in terms of Article 15.2.4 of the TSA, the petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights and obligations in the TSA. The first petitioner has stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, the first petitioner, as a licensee cannot create security interest over all the movable and immovable assets of the first petitioner in favour of Security

Trustee/Lenders and for any subsequent transferees, assigns, novatees thereof and any refinancing lenders to the project, acting on behalf of and for the benefit of the lenders pursuant to Indenture of Mortgage, declaration and memorandum of entry and other security creating documents/Financial Agreements and for future refinancing transactions, by way of mortgage/hypothecation/assignment of mortgaged properties and project assets without approval of the Commission. Accordingly, the petitioners have filed the present petition seeking prior approval of the Commission for creation of security in favour of Security Trustee/lenders by way of mortgage/hypothecation/assignment of mortgaged properties and projects assets through execution of Security Trustee Agreement and other financing documents for the project.

9. The petition was heard after notice to the petitioner and the respondents. No reply has been filed by the respondents. None was present on behalf of the respondents despite notice.

10. During the course of hearing, the representative of the petitioner submitted that the petitioner is a separate legal entity and has its own books of accounts and balance sheet. The petitioner vide Record of Proceedings for the hearing dated 16.2.2017 was directed to file the details of estimated project cost and its financing plan agreed by the lenders. The petitioner vide its affidavit dated 27.2.2017 has submitted that the total project cost is estimated to be Rs. 1027crore and the equity amount in the form of promoter`s contribution is Rs 227 crore and the debt by way of Facility Agreement is Rs.800 crore.

11. We have considered the submissions made by the petitioner. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans. It is a normal practice followed by financial institutions/banking industry to ask for sufficient security from the borrower to back the loan in order to mitigate the credit risk of the lenders. In the instant case, the first petitioner and consortium of lenders lead by Yes Bank have appointed the second petitioner, namely IDBI Trusteeship Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Facility Agreement dated 7.10.2016 have been executed for a loan of Rs. 800 crore. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create an encumbrance over all or part of the receivables, Letter of Credit or the other assets of the project in favour of the lenders or the representatives of the lenders, as security for amounts payable under the Financing Agreements and other amounts agreed by the parties.

12. Section 17 (3) and (4) of the Electricity Act, 2003 provides as under:

“17.(3) No licensee shall be any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

13. As per the above provision, a licensee is required to obtain approval of the Commission for assigning his licence or transfer its utility or any part thereof by way of sale, lease, exchange or otherwise and to enter into an agreement relating to any of these transactions. We are satisfied that IDBI Trusteeship Service Limited as Security Trustee needs to be given comfort for creation of security for the benefit of

banks/financial institutions/non-banking financial companies as security for the financial assistance provided by the lenders. We, therefore, accord in principle approval allowing the first petitioner to create security in favour of IDBI Trusteeship Service Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage on project assets by execution of indenture of mortgage for the project. It is, however, made clear that the transmission licence granted by the Commission to the first petitioner and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee. The petitioner vide its affidavit dated 27.2.2017 has submitted that it is a separate legal entity and has its own books of account and balance sheet. We direct that the petitioner shall continue to maintain its own books of accounts and balance sheet. The petitioner vide its affidavit dated 27.2.2017 has submitted that the total project cost is estimated to be Rs. 1027 crore and the equity amount in the form of promoter's contribution is Rs 227 crore and the debt by way of Facility Agreement is Rs.800 crore. Accordingly, the estimated debt:equity ratio has been worked out as 77.89:22.10. Before agreeing to transfer the licence and the assets of the first petitioner to the nominee of Security Trustee, the Commission shall evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and to be able to execute the project and undertake transmission of electricity. The licensee, lenders, security trustee and the nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This decision of ours is in accordance with Regulation 12 of the Central

Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 which reads as under:

“12. Assignment of Licence

In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to a nominee of the lenders.”

Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lenders subject to proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Security Trustee or transfer of any assets to them shall always be needed. Lastly, finance documents and statements may be filed by the first petitioner as and when required by the Commission for any specific purpose.

14. With the above, Petition No. 12/MP/2017 stands disposed of.

**Sd/-
(Dr. M.K.Iyer)
Member**

**sd/-
(A.S. Bakshi)
Member**

**sd/-
(A. K. Singhal)
Member**

**sd/-
(Gireesh B. Pradhan)
Chairperson**